



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/913,976    12/22/97    HODGKINSON    M    71272

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HM22/0607

EXAMINER

PRYOR, A

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

06/07/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/913,976

Applicant(s)

Hodgkinson

Examiner

Alton Pryor

Group Art Unit

1616



☒ Responsive to communication(s) filed on Feb 15, 1900

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 22-42 is/are pending in the application.

Of the above, claim(s) 23, 36, and 37 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 22, 24-27, 31, 33-35, 38, and 40-42 is/are rejected.

☒ Claim(s) 28-30,32,39 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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### **Detailed Action**

#### ***Action Summary***

Applicant's election (benzotriazole and sulphonate) in paper no. 13 filed 2/15/00 has been searched and identified by the prior art.

#### ***Claim Rejection under 35 U.S.C. 102(b)***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Parham (GB 2257044; 1/6/93).

Parham discloses a herbicidal (agricultural) oil sprayable composition for controlling weeds comprising a benzotriazole, and an oil based spray adjuvant. See abstract, p. 4 lines 4-16.

#### ***Claim Rejections under 35 U.S.C. 103(a)***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 22,24-26,31,33,34 are rejected under 35 U.S.C. 103(a) as being unpatentable over NL 6701062; 1/24/67.

The abstract discloses a herbicidal (agricultural) oil sprayable composition for controlling weeds comprising 5.5% calcium sulphonate, a fatty or hydrocarbon oil, and a surfactant. See abstract. Overbased sulphonates are metal sulphonates. See instant application p. 3 lines 20-25. The prior art does not disclose the composition comprising 0.01-5% or preferably 1% over based calcium sulphonate; C15-C30 hydrocarbon or paraffinic oil; and 0.5-20% surfactant. However, one having ordinary skill in the art at the time the invention was made would have been expected to determine the optimum amounts of ingredients (sulphonate and surfactant) through routine experimentation. One would have been motivated to do this so that the most effective herbicidal or agricultural composition would have been developed. In the absence of unexpected data, the length of the C-chain of the hydrocarbon oil is unpatentable. One having ordinary skill in the art would have been expected to determine the optimum chain length through routine experimentation.

5. Claims 22,24-27,31,33-35,38,40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over NL '062 and Parham above.

See Parham and NL '062 rejections above. The abstract discloses a herbicidal (agricultural) oil sprayable composition for controlling weeds comprising 5.5% calcium sulphonate, a fatty or hydrocarbon oil, and a surfactant. See NL '062 abstract. The reference does not disclose the composition comprising benzotriazole. However, Parham discloses a herbicidal

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(agricultural) oil sprayable composition for controlling weeds comprising a benzotriazole, and an oil based spray adjuvant. See GB '044 abstract, p. 4 lines 4-16. One having ordinary skill in the art at the time the invention was made would have been expected to combine the two compositions to form a third composition comprising all of the above ingredients. One would have been motivated to do this because both compositions have the same property (oil sprayable) and utility, i.e., both compositions are herbicides.

#### *Claim Objection*

6. Claims 28-30,32,39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach the specific benzotriazoles or the treatment of the hydrocarbon oil of the instant claims.

#### *Telephonic Inquiry*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

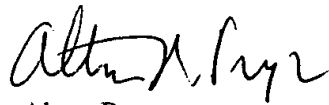
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read "Alton Pryor". The signature is fluid and cursive, with the first name "Alton" and last name "Pryor" clearly distinguishable.

Alton Pryor

Patent Examiner, AU 1616

5/1/00